

DEPARTMENT OF NATURAL RESOURCES

DIRECTOR'S ANNUAL REPORT: 2012

IC 4-22-2-28.1(k)

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Director, Department of Natural Resources
Secretary, Natural Resources Commission
October 11, 2012

Forwarded to:

Legislative Council
Indiana Economic Development Corporation

ANNUAL REPORT

IC 4-22-2-28.1(k)

TITLE 312 NATURAL RESOURCES COMMISSION

IC 4-22-2-28.1(k) Responses

IC 4-22-2-28.1(k) Responses

The number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved

ARTICLE 1. DEFINITIONS

LSA Document #07-111(F)

Questions were received regarding definitions associated with riparian rights, public freshwater lakes, and navigable waters. It is unknown whether the inquiries were made by small businesses.

LSA Document #08-286(F)

The definition of “lake” generates periodic comments and questions. Whether these originate from small businesses is unclear but probably unlikely. They seem more likely to come from individual landowners (or their attorneys) concerned with riparian rights. Also, the definition of “lake” is not typically an independent question but part of a suite of questions pertaining to riparian rights. With these qualifications, the best estimate is that a total of twelve comments and questions were received during the most recent fiscal year, with at least two including elements of complaints.

ARTICLE 3. ADJUDICATORY PROCEEDINGS

LSA Document #10-162(F)

Consideration of this rule section is atypical. The authority for the section was seemingly repealed by P.L. 100-2012 effective July 1, 2012. The repeal has generated a great deal of discussion among attorneys, particularly those who practice in environmental law, including questions as to whether the NRC could retain the rule applying authorities other than the repealed statutory section. The estimate is that 25 comments, complaints, or questions have been fielded. The consequences of P.L. 100 were part of an ISBA continuing legal education seminar held on May 9. Some of the concerns expressed would relate to the activities of small businesses.

LSA Document #08-688(F)

One question was received.

LSA Document #08-52(F)

The Natural Resources Commission, Division of Hearings, receives approximately three calls per week (156 per year) from persons requesting information regarding administrative procedures in adjudicatory proceedings. It is unknown whether the inquiries were made by small businesses.

ARTICLE 8 PUBLIC USE OF NATURAL AND RECREATIONAL AREAS

LSA Document #11-421(F)

We have received approximately 20 e-mails regarding *Firewood on DNR Property* between being implemented in March 2012 and the June 30, 2012 fiscal year end. The following is a general breakdown by category:

- Visitor Complaints = 3
- Visitor Questions = 9
- Small Business Complaints = 3
- Small Business Questions = 5

LSA Document #09-470(F)

No questions, comments, or complaints were received. These amendments probably have no direct relevance to small businesses.

ARTICLE 9 FISH AND WILDLIFE

LSA Document #12-109(F)

One question was received.

LSA Document #11-470(F)

Eight comments, complaints, or questions were received.

LSA Document #11-358(F)

38 comments, complaints, or questions were received.

LSA Document #11-170(F)

Two questions were received regarding the clarification of authority for 312 IAC 10-5-6.5 and request to post the approval of logjam removals on-line for the public to see.

LSA Document #11-101(F)

28 comments, complaints, or questions were received.

LSA Document #10-667(F)

One comment and complaint from a small business pertaining to 312 IAC 9-10-13.1 was received. The comment and complaint pertained to the prohibition on the use of raptors possessed under a falconry license for movies and other films as part of a commercial operation as well as the prohibition on allowing other to pay a fee to a falconer to go hunting with the falconer.

LSA Document #10-614(F)

Three comments were received. All comments pertained to the limits on the species of furbearing mammals that can be kept alive during the trapping season under 312 IAC 9-3-15.5(g) and the limit on the number of days in which a trapper can keep an untanned hide or unprocessed carcass of a furbearing mammal under 312 IAC 9-3-14.5(d).

LSA Document #10-104(F)

Two comments, complaints, or questions were received.

ARTICLE 10.5. REGULATION OF DAMS

LSA Document #06-92(F)

No comments, complaints, and questions were received regarding the rule from small businesses, by the Small Business Regulatory Coordinator (SBRC) for LSA Document #06-92(F) in the most recent State fiscal year ending in June of 2012.

Typical program focused comments, complaints, and questions routinely received are regarding the larger subject matter of dam safety, owner financial assistance, population at risk and the State's dam safety statute IC 14-27-7.5. They can be categorized into fourteen groups.

- Individuals living in the potential dam breach failure flood inundation areas below dams, seeking answers about the safety of the dams that put them at risk and the actions of the dam owners (or lack thereof) to correct deficiencies.
- Outrage from people that bought property downstream of dams and were not told by the seller or real estate professional that there are serious safety deficiencies with the dam.
- Outrage from people that bought property around manmade lakes and were not told by the seller or real estate professional, that there are serious safety deficiencies with the dam, or that they have financial / ownership obligations associated with the dam's upkeep and operation.
- Outrage from people that bought property around manmade lakes, which were flooded because their homes were built with lowest floor levels below the top of their dam.
- Concerned citizens wanting the Department to take more enforcement action to make the dam owner improve the dam to a safer condition.
- Questions from reporters seeking to follow up on State efforts to require dam owners to repair or rehabilitate dams damaged during the major 2008 flood events throughout Indiana.
- Engineering firms asking technical questions in either an attempt to learn how to design safe dams, or to understand the concepts of inspecting dams.
- Engineering firms with experience in dam safety engineering seeking to coordinate technical issue review prior to finalizing new dam, or existing dam rehabilitation designs.
- Owners of dams who don't understand why the statute holds them responsible for the safety, high hazard dam inspection, maintenance, operation, and repair of their structures.
- Owners of dams seeking State or Federal financial assistance for the performance of high hazard dam inspections, maintenance, operation, and questions from owners seeking financial assistance for the repair / rehabilitation of their structures.
- Owners of dams seeking free technical guidance / design services for creating or modifying their dams.
- Owners of dams seeking free technical engineering analysis and guidance during either times of incident / emergency conditions at their dams, or when deficiencies have grown to the point that structural rehabilitation is required.
- Questions from owners seeking to give their damaged or failed dams to the State.
- Emergency response agencies seeking on site assessments, technical analysis, and guidance during times of incident and emergency conditions at dams.

ARTICLE 13 WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

LSA Document #11-332(F)

There have been approximately thirty-five (50) general comments, fifty (75) questions, and four (9) complaints from small business with regard to this rule adoption.

It is estimated that the Division of Water received approximately 1,000 inquiries from small businesses regarding the provisions of 312 IAC 13 during the past fiscal year. Most inquiries were related to the licensing and continuing education requirements for well drillers and pump installers under IC 25-39 and 312 IAC 13.

ARTICLE 18 ENTOMOLOGY AND PLANT PATHOLOGY

LSA Document #08-413(F)

Several small businesses a week contact the division to request compliance agreements to ensure compliance with the current rule. Members of the public (approximately 10-20 per week)

contact the division with questions about the current quarantine and their ability to move regulated materials throughout the state of Indiana.

LSA Document #09-85(F)

Several small businesses a week contact the division to request compliance agreements to ensure compliance with the current rule. Members of the public (approximately 10-20 per week) contact the division with questions about the current quarantine and their ability to move regulated materials throughout the state of Indiana. Especially in regards to firewood movement across state lines as well as movement within Indiana.

ARTICLE 19 RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS

LSA Document #10-60(F)

Three questions regarding form completion during the license application process were resolved. These three questions were unrelated and primarily for the reassurance of the judgment of the dealers asking.

Three requests for clarification of the rule or processes were received;

- 1) Should Out of State purchases be recorded on the Log of Transactions - yes
- 2) Can employees of a shop purchase on premises without an individual license - yes
- 3) Can out of state residents sell Indiana dug roots to an Indiana dealer - yes

Two questions regarding proper process to use regarding lost or late documents were resolved. These questions were unrelated and involved specific situations.

One question regarding the early harvest of woods grown (IND WILD by legal definition) was rather complex. A farmer in the I-69 corridor near Bloomfield was requesting permission to harvest before season allows. An outside consultant was brought in who verified the plants as wild by definition.

As a result of study of the law and rule, the farmer was instructed to begin by moving all young plants at the affected site to another site on his property, then to wait to harvest the plants of legal size quota when season opened September 1. Due to the number of plants affected this allowed the farmer to have a legal harvest and to save his future crops.

ARTICLE 22. HUMAN REMAINS, BURIAL OBJECTS, AND ARTIFACTS

LSA Document #10-59(F)

Two comments and three questions were received from the public.

ARTICLE 27 FLOOD CONTROL REVOLVING FUND

LSA Document #09-199(F)

The Flood Control Revolving Fund was created by IC 14-28-5 in the 1950s, and intended to encourage local initiatives to solve local flooding and water resource problems. By statute, this Fund provides only to local units of government low interest loans to help finance relevant local flood control programs. By statute, this loan program can only be obtained by entities falling

under the definition of *local unit* as set forth by IC 14-28-5-4. Local unit is defined as county, city, town, or special taxing district created by law such as a conservancy district. Therefore, this loan program is not available to small businesses.

No comments, complaints, and questions were received regarding the rule from small businesses, by the Small Business Regulatory Coordinator (SBRC) for LSA Document #09-199(F).

Typical program focused comments and questions routinely received from individuals and engineering consultants are regarding the larger subject matter of how to expand the statute so as to:

- allow a broad group of non-governmental applicants,
- expand the definition of what could be considered a flood control project, and
- allow access to funds earlier in the conceptual / feasibility phase of project contemplation.

The number of complaints or questions reported that were resolved to the satisfaction of the agency and the small businesses involved.

ARTICLE 1. DEFINITIONS

LSA Document #08-286(F)

Subsequent feedback was minimal, but all but two of the references to “lakes” were seemingly resolved to the satisfaction of the agency and citizen. Those unresolved resulted in adjudications.

LSA Document #07-111(F)

It is believed that the questions received regarding definitions associated with riparian rights, public freshwater lakes, and navigable waters were answered to the satisfaction of the inquirers. However, it is unknown whether the inquiries were made by small businesses.

ARTICLE 3. ADJUDICATORY PROCEEDINGS

LSA Document #10-162(F)

Almost universally, the discussions arise from P.L. 100-2012 and its apparent repeal of the underlying statutory authority, not the rule section. Concerns have not been resolved, but these were directed to the likely emasculation of the rule section and not its existence.

LSA Document #08-688(F)

On one occasion in the fiscal year, an attorney inquired concerning the possible use of the subject rule section. The probability is that he was representing a small business. There was no follow-up, and the attorney did not subsequently use the section (or at least has not yet used the section). The belief is the question was answered effectively.

LSA Document #08-52(F)

It is believed that the questions received regarding adjudicatory proceedings were answered to the satisfaction of the inquirer and agency; however, it is unknown whether the questions were posed by small business.

ARTICLE 8 PUBLIC USE OF NATURAL AND RECREATIONAL AREAS

LSA Document #11-421(F)

All complaints and questions were provided detailed replies to the extent that no further discussion was necessary or correspondence left open ended. We feel that all correspondence was resolved with satisfaction.

ARTICLE 9. FISH AND WILDLIFE

LSA Document #12-109(F)

One question was resolved.

LSA Document #11-470(F)

Seven of the eight comments, complaints, or questions were resolved.

All comments, questions, and complaints were resolved to the satisfaction of the DNR. Three were resolved to the satisfaction of the small business involved; one was not relevant to this rule package, and the another was not resolved to the satisfaction of the small business involved. The small business supported the approach, but not the rule language.

LSA Document #11-358(F)

35 of the 38 comments, complaints, or questions were resolved. Most of the comments were resolved to the satisfaction of the agency (DNR); the Natural Resources Commission gave final adoption to the rule that did not completely satisfy the agency. The majority of the comments or complaints were resolved to the satisfaction of the small businesses involved (approximately 35 comments) because the Commission approved language to exempt out the Ohio River and the rivers that enter the Ohio River in all of the counties adjacent to the Ohio River from this rule. The small businesses that have tournaments on other rivers, such as the White River and St. Joseph River, were not satisfied with the outcome of the rule.

LSA Document #11-170(F)

All questions were resolved.

LSA Document #11-101(F)

10 of the 28 comments, complaints, or questions were resolved.

LSA Document #10-667(F)

The comment and complaint were resolved to the satisfaction of the agency (DNR), but not to the satisfaction of the small business involved.

LSA Document #10-614(F)

None of the comments and complaints received was resolved to the complete satisfaction of the agency (DNR), but the comments and complaints were resolved to the satisfaction of the DNR's Division of Fish and Wildlife. Agency staff was not in agreement on the proposed changes. None of the comments or complaints was resolved to the satisfaction of the small businesses involved.

LSA Document #10-104(F)

The comments, complaints, or questions received were not resolved.

ARTICLE 10.5. REGULATION OF DAMS

LSA Document #06-92(F)

No rule related complaints or questions were raised with the small business regulatory coordinator.

ARTICLE 13 WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

LSA Document #11-332(F)

All questions and complaints have been addressed and resolved for this rule adoption.

All complaints and questions reported to the Division of Water during the past fiscal year with regard to the provisions of 312 IAC 13 are believed to have been resolved to the satisfaction of the Division and the small businesses involved.

ARTICLE 18 ENTOMOLOGY AND PLANT PATHOLOGY

LSA Document #08-413(F)

All questions were answered to the satisfaction of the agency and small business or members of the public in a timely manner. Members of the public occasionally disagree with the inability to move firewood into state properties. However, this requirement proposed and adopted by state properties does not apply to the rule above.

LSA Document #09-85(F)

All questions were answered to the satisfaction of the agency and small business or members of the public in a timely manner. Members of the public occasionally disagree with the inability to move firewood into state properties. However, this requirement proposed and adopted by state properties does not apply to the rule above.

ARTICLE 19. RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS

LSA Document #10-60(F)

All complaints and questions were resolved.

ARTICLE 22. HUMAN REMAINS, BURIAL OBJECTS, AND ARTIFACTS

LSA Document #10-59(F)

All questions were resolved to the satisfaction of the inquirer.

ARTICLE 27 FLOOD CONTROL REVOLVING FUND

LSA Document #09-199(F)

No rule related complaints or questions were raised with the small business regulatory coordinator.

The total number of staff serving as coordinators under this section during the most recent state fiscal year

There were 20 staff members serving as coordinators for a total of 75 rules under IC 4-22-2-28.1 during the State fiscal year 2011–2012.

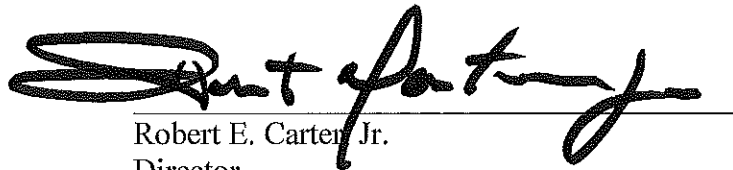
The agency's costs in complying with this section during the most recent state fiscal year

Total cost reported by the small business regulatory coordinators in the fiscal year 2011–2012 is \$19,612.39.

The projected budget required by the agency to comply with this section during the current state fiscal year

The projected budget required by the agency to comply with this section during the current 2012–2013 state fiscal year is \$21,573.63.

DATE: October 11, 2012

A handwritten signature in black ink, appearing to read "Robert E. Carter, Jr.", written over a horizontal line.

Robert E. Carter, Jr.
Director
Department of Natural Resources

(Final rules filed during 2011 – 2012 Fiscal Year)

LSA Document #12-109(F)
LSA Document #11-470(F)
LSA Document #11-442(F)
LSA Document #11-421(F)
LSA Document #11-358(F)
LSA Document #11-332(F)
LSA Document #11-196(F)
LSA Document #11-177(F)
LSA Document #11-170(F)
LSA Document #11-103(F)
LSA Document #11-101(F)
LSA Document #11-42(F)
LSA Document #10-668(F)
LSA Document #10-667(F)
LSA Document #10-614(F)

(Final rules filed during 2010 – 2011 Fiscal Year)

LSA Document #11-2(F)
LSA Document #10-566(F)
LSA Document #10-547(F)
LSA Document #10-501(F)
LSA Document #10-418(F)
LSA Document #10-230(F)
LSA Document #10-162(F)
LSA Document #10-104(F)
LSA Document #10-59(F)
LSA Document #10-42(F)
LSA Document #09-986(F)
LSA Document #09-984(F)
LSA Document #09-876(F)
LSA Document #09-856(F)
LSA Document #09-806(F)
LSA Document #09-616(F)

(Final rules filed during 2009 – 2010 Fiscal Year)

LSA Document #10-161(F)
LSA Document #10-60(F)
LSA Document #10-51(F)
LSA Document #10-38(F)
LSA Document #10-37(F)
LSA Document #10-33(F)
LSA Document #09-486(F)
LSA Document #09-479(F)
LSA Document #09-470(F)
LSA Document #09-210(F)
LSA Document #09-199 (F)
LSA Document #09-152 (F)

LSA Document #09-137(F)
LSA Document #09-85(F)
LSA Document #09-80(F)
LSA Document #09-60(F)
LSA Document #09-44(F)
LSA Document #08-886(F)

(Final rules reported, and filed during 2008 – 2009 Fiscal Year)

LSA Document #09-155(F)
LSA Document #09-154(F)
LSA Document #09-153(F)
LSA Document #08-775(F)
LSA Document #08-756(F)
LSA Document #08-740(F)
LSA Document #08-688(F)
LSA Document #08-672(F)
LSA Document #08-614(F)
LSA Document #08-534(F)
LSA Document #08-531(F)
LSA Document #08-413(F)
LSA Document #08-295(F)
LSA Document #08-286(F)
LSA Document #08-131(F)
LSA Document #08-76(F)
LSA Document #08-72(F)
LSA Document #08-52(F)

(Final Rules reported, filed during 2007 – 2008 Fiscal Year)

LSA Document #08-57(F)
LSA Document #07-192(F)
LSA Document #07-184(F)

(Final Rules reported, filed during 2006 – 2007 Fiscal Year)

LSA Document #07-146(F)
LSA Document #07-145(F)
LSA Document #07-140(F)
LSA Document #07-111(F)
LSA Document #06-92(F)